GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Bangalore Woollen, Cotton & Silk Mills Co., LTD., Bangalore.

Award of the Labour Court, Bangalore—published.

Read the following papers :—

(1) Letter No. 759/67-68, dated 9th October 1967 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 9th day of October 1967.

Present

Sri P. T. Kadkol, B.Sc., LL.B. — Presiding Officer.

Reference No. 36 of 1966.

Workmen represented by the Secretary, Binny Mills Labour Association, Cottonpet, Bangalore-2. ... *I Party.*

And

The Management of Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore. *II Party*

Reference :

Government Order No. PLM 110 LLD 65, dated 28th June 1966

AWARD.

The Government of Mysore being of opinion that an industrial dispute exists between the Workmen and the Management of M/s. Bangalore Woollen, Cotton and Silk Mills Ltd. Bangalore, have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. PLM 110 LLD 65 dated 28th June, 1966, setting out the following points of dispute for adjudication.—

"I. Are the Management of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore, justified in terminating the services of the following five workmen,

Viz., 1. Sri Madaiah, 2. Sri. Devaiah, 3. Sri. Kuppuswamy 4. Sri Ekambaram and 5. Sri Ramanatha.

II. If not, are they entitled to be reinstated with continuity of service and backwages or to any other relief ?"

2. The cause of the aggrived workmen has been sponsored by the Binny Mills Labour Association, Bangalore. It is a registered Trade Union. This Union, as representing the Workmen, is the First party. The Mangament of the Bangalore Woollen, Cotton and Silk Mills Company Limited, Bangalore, is the Second Party.

3. The Order of Reference is dated 28th June 1966. The dispute relates to the termination of the services of five workmen, namely.—

1. Madaiah
2. Devaiah
3. Kuppuswamy
4. Ekambaram
5. Ramanatha.

4. During the course of these prsceedings, there has been a settlement of the dispute between the Union (First Party) and the Management (Second Party) with respect to the dispute relating to the termination of the services of Madiah, Devaiah, Ekambaram and Ramanatha. The settlement is dated 26th May 1967. It is marked Ex. A. It has been signed by the President and the Secretary of the Union on behalf of the First Party and the Managing Director of the Mills, on behalf of the second party. The settlement has also been admitted before me in Court on 24th June 1967 as noted by me below Ex. A as also in the order sheet of date. Under the settlement, Ex. A. the Management has agreed to reinstate Ramanatha and the Union has given up its demand for the reinstatement of Madiah, Devaiah and Ekambaram. Considering the fact that these workers were dismissed after being found guilty at a domestic enquiry, I think that the terms of the settlement are fair and reasonable and conducive of an industrial peace. Hence I accept this settlement Ex. A and make an Award, in terms thereof, between the Management on the one hand and the four workmen represented by the Union, on the other.

5. This settlement does not cover the case of the aggrieved workmen, Kuppuswamy. The Union has withdrawn its support to Kuppuswamy from the date of the settlement Ex. A as can be seen

from paragraph No.3 thereof. Kuppuswamy stated before me on 20th June 1967 (vide Order Sheet) that he would prosecute his dispute. He has been permitted to engage Advocate Mr.K.Subba Rao to represent him.

6. Kuppuswamy has not given any fresh claim statement after the Union withdrew its support. He has adopted the claim statement and rejoinder submitted by the Union, on his behalf.

7. The averments made in the claim statement dated 26th August 1966, with respect to Kuppuswamy are these.—

> "His duty consisted in staking of pieces of cloth produced for purpose of checking and examination. Those pieces have to be staked on planks meant for the purpose. He simply and implicitly obeyed the orders of all his supervisors including the maisthry in charge. He was found fault with for a very trival matter, for no fault of his inspite his scrupulously carrying out the intimations of hisimmediate supervisors. He has not committed any misconduct as alleged. No independent witnesses are examined. The enquiry is one-sided, perfunctory, improper and absolutely unsustainable, either on facts or on law as stated *supra*. He is young full of life and is victimised for no fault of his. He is put to untold hardship and annoyance for want of employment. He is entitled for reinstatement, with all backwages continuity of service and benefits from the date of disscharge till the date of his reinstatement. The termienation is to say the least any thing but justified. He was charge-sheeted on 6th November 1963 and his services were unjustly terminated on 10th November 1963."

8. The contentions raised by the Management, in its statement of objections dated 19th September 1966 with respect to Kuppuswamy are these:

> "a) On 3rd November 1963 at about 9-15 a. m Kuppuswamy behaved in an insolent manner towards the Warehouse Master who was his Superior Officer. He was, therefore, given a charge-sheet on 6th November 1963 charging him with misconduct falling under Standing Order No.13 (11) *i.e.* act subversive to discipline. He submitted a written explanation on 8th November 1963. An enquiry was then held by the

Mill Manager in the presence of Sri Kuppuswamy on 10th November 1963 when he was given full opportunity to cross examine the witnesses examined in support of the charge and to produce his own witnesses. On a proper assessment of the evidence tendered at the enquiry, the Mill Manager came to the conclusion that the charge laid against Sri Kuppuswamy had been proved. Taking into account the gravity of the misconduct which had been proved at the enquiry and his past conduct, which was not satisfactory, the Mill Manager found him not a fit person to remain in the employment of the Company and terminated his services by payment of one month's wages and dearness allowance in lieu of notice.

b) The proceedings of the enquiry will establish that the termination of the workmen's services was fully justified.

c) A copy of each of the charge-sheet, written explanation of Sri Kuppuswamy, notice of enquiry, proceedings of the enquiry, order of termination of service, vouchers for acceptance of payment of arrears of pay and Provident Fund are annexed hereto as annexures D1, D2, D3, D4, D5, D6 and D7."

9. The averments made in the rejoinder dated 3rd October 1966, by the Union, with respect to Kuppuswamy are these:—

"(a) That the charge as per D. 1 is inconveniently vague and absolutely general. The particular act done by the employee which is subversive of discipline as per Standing Order 13 (ii) is not made out in the charge D. 1.

(b) That the worst the act alleged, *viz.*, shouting at the Ware House Master would be brought under Standing Order 14 clause (2) sub-clause (iv) (f) or (h) and would only warrant a warning at the hands of the Manager. The punishment of dismissal given is too severe and heartrending, and the same by no means can be deemed to be proper and proportionate to the gravity of the offence involved. This incident is the first of its kind in the life of Kuppaswamy in the Mills. The punishment afforded is too drastic and disproportionate. The worker concerned claims to have an unblemished and an absolutely clear record of service.

(c) That the facts which lead to the incident are unequivocally incorporated in clear terms in D2 the explanation submitted so far back as on 8th November 1963 and speaks volumes for itself.

(d) That the incident and the words exchanged do not warrant in any manner a case of subversive to discipline and the worker never behaved in any insolent manner and admittedly he was directed by the Master to the Manager only for a warning.

(e) That even a regret of the incident is also expressed by the worker and condonation of the lapses, if any, is prayed for.

(f) That the Mill authorities have automatically dealt with the incident to the great risk and cost of the very life of the worker who is deprived of his employment inspite of his loyal service for 2 years and more.

(g) That the very words and action that resulted in the inference of the matter being subversive of discipline is not mentioned anywhere in the proceedings except the explanation of the worker, D. 2.

(h) The extenuating circumstances involved, *viz.*, the want of space to stack the pieces and high mounting of the pieces already stacked and the worker always speaks in a loud voice have not been given their due consideration.

(i) That what is it that amounted to the insolent behaviour is not forthcoming even from the Manager.

(j) That the very version of the Manager and the Ware House Master Viraraghavan are utterly contradictory to each other.

(k) The charge itself is not only supremely vague but also is very improper and unjust even according to the very evidence of the Ware House Master himself.

(l) That the words admittedly said to have been uttered cannot by any stretch of imagination be termed as insolent. The words even if they are admitted to have been uttered are "you do not understand our difficulties" "You think we are all slaves?" "You do not know how to treat us". "Are we not human beings?" etc. None of these words could be said to impute insolence, under any stretch of imagination.

(m) That even the alleged aggressive attitude and the alleged gestures are not true and even if true they do not merit and warrant the worst treatment of dismissal. The dismissal makes manifest the conduct of the official superiors and amply justified the very significant fact they do not know how to treat the workers. The punishment is too drastic to be upheld by this Hon'ble Court.

(n) That evidently the representation perhaps made in a loud voice as he was habituated for the loud tone on account of his working among machines while a mazdoor is unfortunately mis-understood for insolence.

(o) The charge is conveniently vague and does not mention the conduct of the worker complained of. Admittedly the alleged insolent behaviour is subsequent to the alleged conduct of the worker.

(p) The past records have not been taken into consideration. The record is not produced in the enquiry. More than all the best evidence in the case of what happened on the occasion, *viz.*, the Ware House Master's immediate complaint in writing admittedly written down in the query book to the Mill Manager about Kuppaswamy's behaviour in the office is no produced and marked in the enquiry proceedings.

(q) That too much is made of the sick leave availed of as the same was inevitable on account of the fracture of the finger of Kuppaswamy while he was working in the mechanical department turning section. The E. S. I. records amply justify the statement made above.

(r) The Manager was wrong in having relied more on the oral statement of the departmental officer rather than the actual entries maintained in the records. This fact has, extremely, jeoparadised the case for the worker."

10. On 5th November 1966, when questioned, Mr. Sadagopan for the Management submitted that he would not lead any additional evidence in support of the charge against the delinquent.

Hence only the following additional issues have been framed and set down for hearing :—

(1) Does the First Party prove that the findings recorded at the domestic enquiry and the order of termination based on them are liable to be set aside on any or all of the following grounds :—

(a) The Management's actions are lacking in *bona fides*;

(b) It is guilty of victimisation or unfair labour practice;

(c) The enquiry held and orders passed are basically erroneous or are in violation of the principles of natural justice ;

(d) On the facts placed on recerd they are completely baseless or perverse.

(2) Are the delinquent workmen or any of them entitled to reinstatement with or without back wages and continuity of service ?

(3) What Award ?

These issues were framed when the settlement at Ex. A. had not yet been reached between the parties, so as to cover all the five aggrieved workmen. Now they may be taken to have been framed only with respect to the aggrieved workman, Kuppuswamy.

11. Parties were asked to lead evidence with respect to these issues and they have done so. Kuppuswamy has examined himself as W. W. 1. For the Management Sadagopan has been examined as M. W. 1. The records of the domestic enquiry have been marked in evidence as Exts. M. 1 to M. 4, by common consent.

12. Before proceeding to discuss the issues formulated above, it is necessary to consider one basic contention raised by the Management, but about which, it has not sought any issue. Before making the present order of reference on 28th the Government of Mysore had refused twice-once on 17th June 1966, August 1964 and again on 21st August 1965— to refer the present dispute for adjudication, under the Industrial Disputes Act. Both the orders have been produced by the Management as Annexures A1 and A2 to the statement of objections. On the basis of these orders, it is contended by the Management that the present reference is arbitrary and bad and this Court cannot adjudicate upon it. It is admitted by Mr. Subba Rao for Kuppuswamy that Government had, on two previous

occasions, declined to refer this dispute for adjudication. Hence the question for decision would be whether the present reference is bad in view of the two earlier orders of the Government declining to refer it for adjudication. On this question, we have two decisions of the Punjab High Court and one of our own High Court. They are :—

(1) 1964 (I) LLJ 644 (Punjab) ... Rawalpindi Victory Transport Co., (P) Ltd., *Vs.* State of Punjab.

(2) 31 F. J. R. 266 (Punjab) ... Gandhara Transport Co., (P) Ltd., *Vs.* State of Punjab.

(3) 1963 (2) LLJ 717 (Mysore) ... Vasudev Rao (B.K) *Vs.* State of Mysore.

In the first mentioned case, the Punjab High Court has held that the fact that appropriate Government had refused to refer an industrial dispute for adjudication could not bar the Government from subsequently referring the same dispute for adjudication. In the second mentioned case, the same High Court has taken the contrary view. But our High Court, in the third mentioned case, has held that Government is quite competent to make a reference in such circumstances. It has held that the Government may re-examine the matter, whether in the light of fresh material or otherwise and make a reference if it comes to the conclusion that the Reference is justified, in the interest of industrial peace. It has further held that it is not necessary to examine the reasons which made Government to reconsider its prior order, since it is a matter entirely within the State Government's competence. In view of this decision of our High Court, the contention of the Second Party Management shall have to be rejected and it be held that the present reference is not bad. I do so and proceed to examine the other issues in the case.

13. Admittedly, Kuppuswamy has been dismissed, after being found guilty of misconduct, at a domestic enquiry. The Management has chosen to rely on the enquiry held by it and the findings recorded therein. It has not chosen to lead any additional evidence in support of the charge against the delinquent. Hence, this court would not be competent or justified to interfere with the findings and the order recorded at the domestic enquiry, unless it finds that —

(1) there was lack of good faith ;

(2) there was victimisation or unfair labour practice ;

(3) the Management has been guilty of a basic error or violation of principles of natural justice ; or

(4) on materials placed on record the findings are completely baseless or perverse.

These principles have been laid down by the Supreme Court in Indian Iron and Steel Company Ltd., *Vs.* Their workmen (1958-I-LLJ 260). The same principles have been reiterated in many subsequent decisions and notably in :—

(1) 1959 (I) LLJ 285 — G. McKenzie and Co., *Vs.* Its Workmen.

(2) 1965 (I) LLJ 462 ... Hind Construction and Engineering Co., Ltd., *Vs.* Their Workmen.

The observations made in the second mentioned case are these :—

> "It is now well settled that the Industrial Tribunal is not to examine the finding or quantum of punishment because, the whole of the dispute is not really open before the Tribunal as it is ordinarily before the Court of appeal. The industrial tribunal can only interfere if the conduct of the employer shows lack of *bona fide* or victimisation of the employee or unfair labour practice. The Tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the Officer conducting the domestic enquiry, though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all....."

14. The first issue framed by me is based on these decisions of the Supreme Court. It is only when the Management adduces additional evidence before the Tribunal that it is deprived of the benefit of having the findings of the domestic Tribunal being accepted as *prima facie* proof of the alleged misconduct of the concerned workman unless the finding is perverse and it has to prove to the satisfaction of the Tribunal that the workman is guilty of the alleged misconduct. This is the principle laid down in Bharat Sugar Mills Ltd., *Vs.* Jai Singh (1961-2-LLJ 644). Since the Management has not led any additional evidence before

this Court, I have to restrict this enquiry to the points set out by the Supreme Court, as justifying grounds for interfering with the order passed in the domestic enquiry.

15. Utmost emphasis has been laid in all decisions on one important requirement in the domestic enquiry. It is, that the domestic enquiry should not be violative of any of the principles of natural justice. The leading decision of the Supreme Court on this point is in Union of India *Vs.* Verma (1958-2-LLJ 259). It has been laid down therein that rules of natural justice require that the delinquent should have the opportunity of adducing all relevant evidence on which he relies; evidence of the opponent should be taken in his presence; he should have an opportunity of cross-examining the witnesses examined by the opposite party; and no material should be relied upon against him without his being given an opportunity of explaining them. If these conditions are satisfied, the enquiry is not open to attack on the ground that the procedure followed is not strictly according to Evidence Act. Similar principles have been laid down in Associated Cement Companies Ltd., *Vs.* their Workmen (1963-2-LLJ 396). The essentials of a domestic enquiry as laid down in Sur Enamel and Stamping Works Ltd., *Vs.* their Workmen (25 F. J. R. 38) are :—

(1) The workman proceeded against should be clearly informed of the charge levelled against him;

(2) The witnesses should ordinarily be examined in the presence of the workman in respect of the charges ;

(3) The workman should be given a fair opportunity to cross-examine the witnesses ;

(4) he should be given a fair opportunity to produce witnesses including himself in his defence, if he so wishes, on any relevant matter, and

(5) The enquiry officer should record his findings with reasons therefor, in his report.

Considering the sequence of these requirements, it can be inferred that the normal procedure to be followed should be that before the delinquent is examined or called upon to lead evidence in his defence, the Management should examine its witnesses and adduce such other evidence as it wants to and give an opportunity to him to test it by cross-examination. This inference is fully supported by the decision of the Supreme Court in Associated

Cement Companies Ltd., *Vs.* their Workmen (1963 II LLJ 396), where it has been observed :—

> "It is further necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give an explanation about the evidence led against him. It is not fair that in domestic enquiries against industrial employees, the employee should be, at the very commencement of the enquiry closely cross-examined even before any evidence is led against him. In dealing with domestic enquiries the fact should be borne in mind that in a large majority of cases, employees are likely to be ignorant and so it is necessary not to expose them to the risk of cross-examination at the very commencement of the domestic enquiry."

16. With this legal position at the background, I now proceed to examine the records of enquiry, which are not in dispute. They are marked Exts. M-1 to M-4.

17. Ex. M.1 is the charge sheet issued to Kuppuswamy. It is dated 6th November 1963. In the first part of this charge sheet, Kuppuswamy has been informed that he had committed a misconduct (as per particulars that follow) falling under Standing Order No. 13, sub-clause 11, the punishment for which was summary dismissal. He has been called upon to submit a written explanation in his defence by 10 A. M. on 8th November 1963. Then follow the particulars of the misconduct as under :—

> " Standing Order 13 (11) Conduct subversive to discipline in that you on 3rd November 1963, at about 9.15 A.M. behaved in an insolent manner towards the Ware House Master by shouting at him and creating a disorderly scene in the Ware House Office."

The charge sheet is signed by the Mill Manager. Kuppuswamy has received the charge sheet and acknowledged it by his signature Ex. M.1 (a).

18. Kuppuswamy has given his written explanation on 8th November 1963, in respect of the charge sheet at Ex. M.1. The explanation is Ex. M.2. He has stated therein (in the first

para) that on 3rd Novemer 1963, he was doing the job of taking the pieces and supplying them to the examiners from the plating machines ; he had mounted some pieces already and there was no place to keep the others ; hence he started stacking the pieces in between the places already mounted ; seeing this, the Assistant Ware House Master, Mr. Allum, asked him not to keep the pieces in between those already stacked and to remove the ones already stacked ; he also pointed out a place to stack them but no room was available there , meanwhile the plating machineman shouted at him to clear the pieces from his table ; he thought it necessary to clear that table first ; hence he again stacked some pieces between those already mounted ; Mr. Allum then thought that his orders had been disobeyed and started abusing him (Kuppuswamy). Mr. Allum asked him to follow him to the room of the Ware House Master. As to what happened in the room of the Ware House Master, has been stated thus by Kuppuswamy :—

> "On coming before the Ware-house Master, Shri Allum narrated his version of the incident to the Master. The Master, immediately asked me to go to the Manager for final warning. I submitted to the Master to provide me an opportunity of narrating my position, which was summarily rejected. I may submit in this connection that the very cardinal principle of Natural Justice has been denied to me and the Master told me that I am just a Mazdoor and should not talk. I was left to no other alternative than to submit to him that I am a human being and I am not a slave and it is but fair that I should be heard before anything is finally decided. The submission of mine seems to have irritated the Master. I have not conducted in a manner which may be termed as "subversive to discipline" and I never behaved in an insolent manner towards the Ware house Master by shouting at him and creating a disorderly scene."

Thereafter, Kuppuswamy has added that if the Authorities were to construe that his humble request for being heard before taking a decision was "subversive of discipline" and "insolent behaviour", he regretted it. Thereafter, Kuppuswamy has added :—

> "However, I may add in this connection that I have put in about two years of service and I have not committed any mistakes and lapses so far and I have kept my

behaviour within the four walls of discipline. I, however, assure your goodself that I endeavour my best not to give room for such an act being recurred in future. In the circumstances, I most humbly request your goodself to consider my case most sympathetically and condone the lapses on my part and to drop further proceedings in this behalf."

19. It appears that this explanation at Ex. M. 2 did not satisfy the Management. Hence the Mill Manager issued him the Notice at Ex. M. 3 stating that an enquiry would be held against him with respect to the charge on 10th November 1963 at 9-30 A. M. and he would be given full opportunity to defend himself and to cross-examine the Management witnesses and examine his own witnesses. He was also asked to give the names of his witnesses before the commencement of the enquiry. Kuppuswamy has received this notice on 9th November 1963, under his signature marked Ex M. 3 (a).

20 The proceedings of enquiry are at Ex. M. 4. The enquiry has been held by the Mill Manager, Mr. Greenwood. Mr. D. Sadagopan, Assistant Personnel Officer is also shown to have been present at the enquiry The first man to be called at the enquiry was Kuppuswamy. To the first question, Kuppuswamy has stated that he wished to be examined in Tamil. In answer to the second, he has given his name, Ticket Number, Job etc; Thereafter Mr. Greenwood has explained to Kuppuswamy the charge against him with full particulars as contained in Ex. M. 1; then he has brought Ex. M. 2 to the notice of Kuppuswamy, in detail; thereafter he has explained to Kuppuswamy, the contents of the notice Ex. M. 3. At the end Mr. Greenwood has asked Kuppuswamy.

Question:—I have used your own words. Do you wish to add anything or to amend anything that you have already said at this stage?

In reply Kuppuswamy started to state his account regarding the stacking of the pieces. But Mr. Greenwood told him that the charge against him was not of stacking pieces in a wrong place but one of behaving in an insolent manner towards the Ware House Manager. After this Greenwood has asked Kuppuswamy whether he had "nominated" his witnesses. Kuppuswamy has stated that he had none.

21. After this, Mr. Viraraghavan has been examined as a Management witness. He has given an account of what happened He is the Ware House Master. At the end Kuppuswamy has been asked to cross-examine Viraraghavan. Kuppuswamy has stated that he had no questions to put toViraraghavan. He has also stated that Viraraghavan had no enmity against him. He has also added that it was his habit to speak in a loud voice.

22. Then Mr. Allum has been examined as the second witness for the Management. He has given an account of what had happened. Opportunity has been given to Kuppuswamy to cross-examine him. Kuppuswamy has asked two questions to Allum. Then he has stated that Allum does not bear any enmity against him.

23. Thereafter, Mr. B. S. N. Moorthy has been examined as the third witness for the Management. He too has given his own account. Kuppuswamy has cross-examined him. He has also stated that this witness also does not bear any enmity towards him.

24. Immediately after this Mr. Greenwood has called back Viraraghavan and elicited from him, the past record of service of Kuppuswamy. He has spoken about Kuppuswamy's absence without leave on a number of occasions and his being warned for it on 9th September 1963. He has also spoken of another occasion when Kuppuswamy had behaved similarly as on the present occasion and how and why he had excused him (Kuppuswamy) on that occasion. After Viraraghavan gave this account, Mr. Greenwood has not asked Kuppuswamy whether he wanted to cross-examine him (Viraraghavan). Mr. Greenwood has also not asked Kuppuswamy, if he had anything to say regarding the evidence led so far against him. He has also not asked Kuppuswamy, at this stage, if he wanted to examine any witnesses in his defence. Straightway Mr. Greenwood has summed up the evidence in all details to Kuppuswamy and told him that he had found him (Kuppuswamy) guilty of the charge and that his misconduct had become aggravated in view of the fact that his insolent behaviour was entirely unprovoked and that there was no extenuating circumstances. The last two paragraphs run as under :—

> "The only question which remains for me is to decide what punishment should be given to you. While looking into your service records, I find that you are educated

up to S.S.L.C. Being an educated person, a better behaviour is expected of you. Further, you heard the Departmental Officer inform me during the course of this enquiry that you had been warned by him for absence for 3 days without leave or permission and that you had availed within a span of about 6 months, 25 days sick leavc No. 9. Much more than all of these, he had let you off only a month earlier for behaving insolently towards him purely because of the request of the departmental workers' representative.

Under the circumstances, I do not consider that you are a fit person to remain in the employ of the Company and I therefore terminate your services with immediate effect on payment of one month's wages and dearness allowance in lieu of notice."

25. A copy of the certified standing orders of the second party management has been supplied to me and it has been included in the records. Kuppuswamy has been charged for misconduct under Standing Order No. 13 (11) which runs as under :—

"Drunkeness, riotous or disorderly behaviour during working hours, in the Mill premises or any act subversive of discipline.....is misconduct for which the punishment may be suspension or dismissal."

26. Mr. Subba Rao, the learned Advocate for Kuppuswamy contended in the first instance that the charge framed against him in Ex. M-1 is very vague in as much as the particulars of the misconduct have not been set out therein. According to him a gist of what happened and what constituted misconduct should have been given in Ex. M-1. I do not think that it was necessary for the Management to do so, though it was desirable to do so. If we read Ex. M-2 we find that Kuppuswamy has not been in the least handicapped or misled by the omission of the particulars in Ex. M-1. The case of the management is that when Mr. Allum took Kuppuswamy to Mr. Viraraghavan and complained against him orally and Mr. Viraraghavan asked the time clerk to bring his record cards, Kuppuswamy flared up and started shouting "you do not find out our difficulty; you do not listen to our grievances." Then Mr. Viraraghavan told Kuppuswamy that he would be heard. Still Kuppuswamy continued in the same strain and said "you think we are all slaves? You do not know how to treat us. Are we not human beings?" Kuppuswamy was not only shouting at the top of his voice but was also gesticulating

with his hands in a wild manner. Then Viraraghavan found it impossible for him to control Kuppuswamy and wrote to the Mill Manager.

27. Though these particulars have not been given in Ex. M 1, Kuppuswamy has covered the entire ground of the charge in Ex. M–2. He has said in Ex. M–2 that he was not left with any alternative but to submit to Viraraghavan that he (Kuppuswamy) was a "human being and was not a slave". In his affidavit (W.W. 1) before me also he has stated :—

> "As the warehouse master refused to hear me and snubbed me saying you are a mazdoor, you shall not talk, I said in my humble way, I am not a slave and that I am also a human being and I should be heard."

Kuppuswamy has admitted in substance, what he is alleged to have said. He has also stated that it is his habit to speak in a loud voice.

28. After going through the records and considering what Kuppuswamy has said in Ex. M–2 and also in his affidavit, I do not think that want of particulars in Ex. M–1 has prejudiced his defence in any way. Both parties are practically agreed as to the words employed by Kuppuswamy in the presence of and to, Mr. Viraraghavan. The words employed by Kuppuswamy, uttered in a submissive tone as now stated by him, need not offend anybody except a super sensitive person, enamoured of his own power, authority and notions of dignity. The same words, uttered in a fit of temper and accompanied by the gesticulations of hand, would give them a complex of insolence and disorderly behaviour and amount to acts subversive of discipline. According to the management witnesses, Kuppuswamy uttered the words in a shouting voice accompanied by gesticulations and the enquiry officer, Mr. Greenwood them. It is not open to me to sit in judgment over Mr. Greenwood and re-asses the evidence.

29. Then Kuppuswamy has stated that he was not given sufficient opportunity to cross-examine the management witnesses. The records of enquiry, however, belie him. No material has been placed before me to hold or at least give room for a reasonable inference that the records do not show a correct state of affairs or are false.

30 Likewise, there is no material to hold or infer that the action taken by the Management was lacking in *bona fides*. The question of unfair labour practice does not arise, since no ulterior

motive is attributed and much less proved to exist. The recognised principles of natural justice have been followed (execpt to the extent indicated below) and the findings recorded are possible findings on the basis of the materials placed on record. The findings cannot be considered to be basically erroneous or perverse. Mr. Sadagopan (M W.1) has stated the manner in which the enquiry was conducted and there is no reason to disbelieve him.

31. If we examine the records of enquiry in the light of the principles laid down in 25 F.J.R. 38 (Sur Enamel and Stamping Works Ltd., *vs.* their Workmen), we find that Kuppuswamy has been clearly informed of the charge against him; the Management witnesses have been examined in his presence; opportunity has been given to him to cross-examine the Management witnesses; and the enquiry officer has recorded his findings with reasons therefor.

32. But one step has been omitted during the enquiry and it is this. At the end of the management evidence, it was necessary that Kuppuswamy should have been given an opportunity to say whatever he had say in his defence and about the management evidence led against him. At that stage, he should also have been asked if he wanted to lead any evidence in his defence. This opportunity does not appear to have been given to him. Kuppuswamy had a right to examine himself as his own witness in his own defence. Of course, he has been asked with respect to each management witnesses, whether the witnesses had any enimity against him. Kuppuswamy has stated that the witnesses had no enimity against him.

33. Normally, the omission of this important step should have been sufficient to hold that the enquiry was not proper. But I am not inclined to hold it to be so, in the circumstances obtaining in this case. Kuppuswamy has admitted that he did say the words attributed to him, to the warehouse manager Mr. Viraraghavan and that he is in the habit of speaking in a loud voice. The situation was that Allum had taken Kuppuswamy to Viraraghavan with a complaint, Viraraghavan was about to get the service records through the time clerk. It is but natural that Kuppuswamy had worked himself up by then. But for it, it is not possible or likely that he should say the words attributed to him In their very nature, the words are such, as are usually employed when a person wants to exhibit his resentment to what is going on before him or with respect to himself. In their very nature, the words are also not such as are, or

can be, uttered in a humble or submissive way and that too in a loud tone. Regard being had to the natural course of human affairs, the words should have been uttered by Kuppuswamy in the way and in the manner stated by the Management. So, this would be a case where facts are admitted leaving only the question as to what inference should be drawn. The inference drawn by the enquiry officer, Mr. Greenwood, is that the words exhibit insolence and disorderly behaviour on the part of Kuppuswamy. This is a possible or a likely inference and it cannot be said to be basically wrong or perverse. Hence, in the peculiar circumstances obtaining in this case, I am of the view that the enquiry has been fair and proper. I feel justified in reaching this conclusion on the authority of the decision of the Supreme Court in Workmen of Lambabari Estate *Vs* Lambabari Tea Estate (1966-2-LLJ 315).

33 The Enquiry Officer has held that Kuppuswamy had behaved in an insolent manner by shouting at the warehouse Master and creating a disorderly scene in the warehouse. It is urged for Kuppuswamy that such an act cannot be considered as an act subversive of discipline within the meaning of Standing Order No. 13 (11). But this contention cannot be accepted. The Andhra Pradesh High Court has ruled in 32 F.J.R. 245 (Sri Ramdas Motor Transport Private Limited *Vs.* Labour Court, Guntur) that what is subversive of discipline and what is a silly incident and what is not silly should best be left to the concerned domestic tribunal which is on the spot and is much more acquainted with matters connected with the particular industry and the Labour Court cannot arrogate to itself the role of an appellate Tribunal sitting in judgment over the domestic Tribunal. In the case on hand, this court cannot go into the question whether the facts admitted or proved amount to acts subversive of discipline, when the Enquiry Officer has held that they amount to acts, subversive of discipline. I, therefore, accept the findings of the Enquiry Officer, Mr. Greenwood, that Kuppuswamy is guilty of the charge levelled against him.

34 As held by the Supreme Court in 1965 I LLJ 462 (Hind Construction Company case) and 24 F. J. R. 406 (Bengal Bhatdee Coal Co., case), the Court cannot normally interfere with the punishment imposed on the delinquent found guilty of misconduct. The Gujarat High Court has also observed very recently in 32 F.J.R. 34 (Manekchowk and Ahmedabad Manufacturing Co., *Vs.* Industrial Court, Ahmedabad) that however severe or unjustified

the punishment awarded by the domestic tribunal may appear to the Labour Court or Tribunal and howsoever it may not be inclined to give such puuishment if it had to deal with the matter, it would not be proper to interfere with the order of the domestic Tribunal unless it was shockingly disproportionate to the act of misconduct committed by the workman. The Tribunal has to judge the severity or adequacy of the punishment from the view-point of the employer who has to carry on the administration of a large concern, for which discipline amongst its workmen is of considerable importance. The same principles are required to be adopted in this case also.

35 If we now turn to Standing Order No. 13, we find that it enumerates various acts, the commission or ommission of which amounts to misconduct. Standing Order No. 14 prescribes the kinds of punishment that may be levied. Further on Standing Order No. 14 provides :—

> "In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record of the employee and any other extenuating or aggravating circumstances that may exist."

36 In the case on hand, the Enquiry Officer Mr. Greenwood has taken into consideration the previous record of Kuppuswamy in passing the order of termination of his services. This means that the present misconduct *plus* the past record together have induced him to pass the order that he has passed. Mr. Green wood had every right to take into consideration the previous record of Kuppuswamy, under the Standing Order reproduced above. But he should have done it in the proper way. He should have got the previous record proved according to law. With respect to it, he has examined Mr. Viraraghavan. But he has not given any opportunity to Kuppuswamy to challenge the statement of Viraraghavan regarding his past records of service. This means that Viraraghavan's statement has remained untested by cross-examination. So, the past record cannot be taken to have been proved according to law. Likewise, Kuppuswamy has also not been given any opportunity to say whether Viraraghavan's statement regarding his past record is true or false or reasonably explainable. It may be that Mr. Greenwood might have thought fit to pass this very order of termination, even without going into the past record of Kuppuswamy. But the possibility of his awarding a lesser punishment also cannot be ruled out, altogher. The

decisions of the Punjab High Court in Shri Gopal Mills *Vs.* Industrial Tribunal, Punjab reported in 1963 I LLJ 226, indicating that an order of dismissal which was passed, taking into account past warnings to the delinquents and without giving an opportunity to explain them, was not good and would not be justified. The decision reported in 1964 I LLJ 321 (Railway Board-*Vs*-Niranjan), though on a different point, lays down a similar principle, on analogy. It has been ruled therein :—

> " Even though the concerned employee could be held guilty of one of the two charges, the order of removal based on both the charges, could not be sustained on the ground that one charge alone is sufficient to justify the punishment given to the concerned employee."

37. Mr. Subba Rao has also referred me to the decisions reported in A.I.R. 1964 Supreme Court 506, A. I. R. 1960 Madras 393 and A.I.R. 1957 A. P. 370. All these are cases relating to Government Employees, under Art. 311 (2) of the Constitution of India. They envisage the principle that if the punishing authority wants to take into account the previous record of the delinquent employee, sufficient opportunity should be given to him, to explain them. Though these decisions cannot be relied upon as direct authorities to cover the present case the principles laid down in them can be adopted in industrial cases also, with advantage.

38. In these circumstances, while accepting the finding of the Domestic Tribunal that Kuppuswamy is guilty of the misconduct alleged against him, I am not inclined to retain the order of the termination of his service. I set it aside and direct his reinstatement.

39. Now coming to the issues, I record my finding on the first issue against Kuppuswamy on all its parts. On the second I hold that he is entitled to be reinstated.

40. The question that would now arise would be whether Kuppuswamy be awarded back wages and continuity of service. He is an educated man, studied upto S. S. L. C examination. He has been found guilty of a misconduct, subversive of discipline, by the domestic Tribunal and I have found no grounds to interfere with that findings. I am setting aside the order of termination because it is based on the present proved misconduct and past record and becasuse no opportunity was given to Kuppuswamy to have his say about his past record. In these circumstances, I am of the

view that only an order of reinstatement without back wages but with continuity of service would meet the ends of justice.

41. In the result, therefore, I proceed to make the following Award-

AWARD.

1. The Reference is accepted.

2. An Award is made between the Management of the Second Party and the four aggrieved workmen (1) Madiah (2) Devaiah (3) Ekambaram and (4) Ramanath' represented by the First Party Union, as per the joint memorandum of settlement marked Ex.a, which should be annexed to this Award and be deemed as forming part of it .

3. As between the Management of the Second Party and the aggrieved workmen Kuppaswamy, I make an Award setting aside the order passed by the Management Terminating his services and directing him to be reinstated, without back wages, but with continuity of service.

4. I direct the Management to reinstate Kuppuswamy in his former post, within one month from the date of the publication of this Award in Mysore Government Gazette, provided he offers himself for duty by giving an intimation in writing.

5. Parties do bear their own costs.

(Sd.) P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

"Copy"

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

FORM H.

(Memorandum of Settlement under Section 12 (3) of the Industrial Disputes Act 1947 read together with Rule-59 of the Industrial Disputes (Mysore) Rules, 1957)

Name of Parties :

Representing employers : The Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore City—Represented by

1. P. Thomas, Managing Director

Representing Workmen :

(1) E. Kenchiah,
President,
Binny Mills Labour Association, Bangalore City.

(2) D. Venkatesh,
Secretary,
Binny Mills Lobour Association, Bangalore City.

Short recital of the case :

WHEREAS the Management of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd.,terminated the services of Messrs. Madiah, Kuppuswamy and Ramanathan in 1962/63 and dismissed from the service of the Company Messrs. Ekambaram and Devappa in 1961/1963 after due enquiry based on the principles of natural justice.

WHEREAS the Binny Mills Labour Association demanded the reinstatement of Messrs. Madaiah, Devappa, Ekambaram, Kuppuswamy and Ramanathan.

WHEREAS the dispute thus arising out of the said demand was referred by the Government of Mysore by notification No. PLM 110 LLD 65 dated 28th June 1966 to the Labour Court and is registered as case No. I. D.86 of 1965 in the said Court.

WHEREAS the Binny Mills Labour Association proposed that in consideration of their withdrawal of the cases of messrs. Madaiah, Ekambaram and Devappa, that Ramanathan and Kuppuswamy be taken back with back wages and continuity of service, and

WHEREAS the Management did not accept the proposal, and

WHEREAS in order to settle the dispute finally the Management offered to take back Ramanathan only, without back wages but with continuity of service, and the Binny Mills Labour Association accepted this offer.

It is hereby agreed that:

(1) The management reinstate Ramanathan without back wages but take into account the service of 1 year 4 months prior to his termination of service, for reckoning his total service when he again leaves the Company's service.

(2) The Binny Mills Labour Association withdraw the cases of Messrs. Madaiah, Ekambaram and Devappa pending before the Labour Court.

(3) The Binny Mills Labour Association undertake not to represent Kuppuswamy's case or prosecute it before the Labour Court in view of this overall settlement with the Management.

(4) Both parties pray in Labour Court to close the cases pending before the Labour Court in view of this compromise settlement.

Dated this 26th day of May 1967 at Bangalore.

Witnesses:—

1. Sd... .....

2. Sd .....

3. Sd .....

Signature of parties.

The Bangalore Woollen Cotton and Silk Mills Co. Ltd.,

Sd...—P. Tomas.

Managing Director
Representing Employers
The Binny Mills Labour Association

4. Sd .....

Sd...—E. Kenchaiah.
President.
Sd...—D. Venkatesh.
Secretary,
Representing Employees.

Marked Ex.A.

Mr. D. Venktesh for I Party and Mr. Shadagopan for II Party admit this settlement in Court.

Sd ... P. T. Kadkol.
24th June 1967.
Sd ... D. Venkatesh. 24th June 67
Sd ... Sadagopan, 24th June 67

"COPY"

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, dated 20th October 1967.

S. O. 2064.—WHEREAS by State Government Order No. PLM 110 LLD 65, dated 28th June 1966, the Industrial Dispute between the workmen and the Management of M/s. Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore was referred to the Labour Court, Bangalore for adjudication.;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above in the *Mysore Gazette*.

[No. PLM 110 LLD 65;

By Order and in the name of the Governor of Mysore,

1228 G. G. PUROHIT, *Under Secy.*